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October 12, 2005

DECISION AND ORDER  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 27, 2005

Case Number: TSO-0239

This Decision concerns the eligibility of XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."<sup>1</sup> In this Decision I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be granted. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should not be granted at this time.

**I. Background**

The individual is an applicant for a DOE security clearance. During a background investigation, a local security office (LSO) uncovered derogatory information that raised questions about the individual's suitability to hold a DOE security clearance. In September 2004, the LSO conducted a Personnel Security Interview (2004 PSI) with the individual to discuss the individual's four alcohol-related arrests. Subsequently, the LSO referred the individual to a board-certified psychiatrist (DOE consultant-psychiatrist) for a psychiatric evaluation. The DOE consultant-psychiatrist examined the individual in November 2004 and concluded that the individual is a user of alcohol habitually to excess and also suffers from alcohol abuse. The DOE consultant-psychiatrist determined that the alcohol abuse from which the individual suffers is a mental illness that causes, or may cause, a significant defect in his judgment and reliability.

Based on the DOE consultant-psychiatrist's findings and other information uncovered during the background investigation, the LSO sent the individual a letter (Notification Letter) advising him that it possessed reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. The LSO also advised that the derogatory information fell within the purview of three potentially disqualifying criteria

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<sup>1</sup> Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h), (j) and (l) (hereinafter referred to as Criteria H, J and L respectively).<sup>2</sup>

Upon his receipt of the Notification Letter the individual filed a written response to the Notification Letter and exercised his right under the Part 710 regulations by requesting an administrative review hearing. On May 9, 2005, the Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in this case. After receiving an extension of time from the OHA Director, I convened a hearing. At the hearing, nine witnesses testified. The LSO called two witnesses and the individual presented his own testimony and that of six witnesses. In addition to the testimonial evidence, the LSO submitted 11 exhibits into the record; the individual tendered nine exhibits. On September 8, 2005, I received the hearing transcript (Tr.) at which time I closed the record in the case.

## **II. Standard of Review**

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). Part 710 generally provides that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest. Any doubt as to the individual's access authorization eligibility shall be resolved in favor of national security.” 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this decision: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct; the individual's age and maturity at the time of the conduct; the voluntariness of the individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

## **III. The Notification Letter and the Security Concerns at Issue**

As previously noted, the LSO cites three potentially disqualifying criteria as the bases for suspending the individual's security clearance, *i.e.* Criteria H, J, and L. To support both

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<sup>2</sup> Criterion H relates to information that a person has “[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). Criterion J relates to information that a person has “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. § 710.8 (j). Criterion L relates in relevant part to information that a person has “[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security . . .” 10 C.F.R. § 710.8(l).

Criteria H and J in this case, the LSO provides the following information. First, a DOE consultant-psychiatrist diagnosed the individual as suffering from alcohol abuse, a mental illness which, in the opinion of the DOE consultant-psychiatrist, causes, or may cause a significant defect in the individual's judgment and reliability. Second, the DOE consultant-psychiatrist also opined that the individual is a user of alcohol habitually to excess. Finally, the LSO cites the individual's two arrests for Driving While Intoxicated (DWI), one in 2000 and the other in 2003. From a security perspective, a mental illness such as alcohol abuse can cause a significant defect in a person's psychological, social and occupational functioning which, in turn, can raise concerns about possible defects in a person's judgment, reliability, or stability. *See* Appendix B to Subpart A of 10 C.F.R. Part 710, Guideline I, ¶ 27. The excessive alcohol consumption itself is also a security concern because the behavior can lead to the exercise of questionable judgment, unreliability, and a failure to control impulses, and can increase the risk that classified information may be unwittingly divulged. *See* Appendix B to Subpart A of 10 C.F.R. Part 710, Guideline G.

Regarding Criterion L, the LSO relates that between 1997 and 2003, the police arrested the individual four times, twice for DWI, once for Disorderly Conduct and Assault on a Peace Officer, and once for Negligent Use of a Deadly Weapon. In addition, the LSO states that a judge issued a bench warrant for the individual's arrest when he failed to appear in court for sentencing in connection with the July 2003 DWI. The individual's arrests are problematic from a security standpoint because they call into question the individual's honesty, reliability and trustworthiness. Those arrests also raise questions about the individual's susceptibility to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of national security.

#### **IV. Findings of Fact**

Most of the facts in this case are uncontested. Where there are discrepancies in the record, I will note them as appropriate.

Since 1997, the individual's excessive consumption of alcohol has resulted in his being arrested four times. In 1997, the police arrested the individual at a rock concert for Disorderly Conduct and Assault on a Peace Officer. During the 2004 PSI, the individual claimed that it was not he who assaulted the security guard in question and noted that the judge dismissed the charges against him regarding this matter. Ex. 11 at 41. At the hearing, the individual testified under oath that he "did put [his] hands on the security guard." Tr. at 135. More importantly, the individual admitted at the hearing that he was "somewhat inebriated prior to the [1997] arrest." *Id.* at 133. According to the record in the case, the individual had consumed six beers before the concert began at 8:00 p.m. Ex. 11 at 38.

In 2000, the police initiated a traffic stop of the individual's vehicle when a police officer observed that the individual's vehicle did not have its headlights on at night. Tr. at 135-136. Suspecting that the individual was intoxicated, the police officer performed a field sobriety test which the individual failed. Thereafter, the individual refused to take a breathalyzer test on the night in question even though the police officer advised him that such a decision would result in the automatic suspension of his driver's license. *Id.* When the individual lost his driver's license, he was fired by his employer at the time

because he was unable to perform the duties of his job without a driver's license. In April 2000, the individual pled guilty to Aggravated DWI. Ex. I. As part of his punishment, the court ordered the individual to abstain from consuming alcohol and attend a "DWI School." Tr. at 137-141. By the individual's own admission, he completed the "DWI School" only to satisfy the court requirements, not to address his alcohol-related issues. *Id.* at 142.

Two years later in 2002, the individual, after consuming alcohol to the point of intoxication, got into a verbal altercation outside a club with a group of men. *Id.* at 143, 145. When the individual observed the same group of men following his vehicle, the individual retrieved his .44 magnum revolver, stuck the weapon out his window, and fired one round of ammunition into the air.<sup>3</sup> Ex. 11 at 17-21, Tr. at 143. The individual was arrested by a police officer who observed the individual's actions. Tr. at 144. Subsequently, the individual pled guilty to Negligent Use of a Firearm in connection with this incident. Ex. G.

In July 2003, the individual, after consuming alcohol at a nightclub, attempted to drive his vehicle home. Ex. 11 at 10-11. A police officer stopped the individual's vehicle for speeding. *Id.* at 13, Tr. at 148. The officer administered a field sobriety test to the individual based upon his suspicion that the individual had been drinking. Tr. at 148. The individual failed the field sobriety test and refused to take a breathalyzer. Ex. 11 at 14. The individual pled guilty to Aggravated DWI in connection with this incident. Ex. H. Due to some confusion on the individual's part, he failed to report to court for sentencing regarding the this DWI. Tr. at 149. As a result, a judge issued a bench warrant for the individual's arrest. Ex. 6 at 16. The individual later turned himself into police on the outstanding warrant but presently faces "contempt of court" charges for his failure to appear at the sentencing phase of this case. Tr. at 151. With regard to the sentencing on the 2003 DWI arrest, the court provided the individual a choice: 28 days in jail or nine months in an outpatient alcohol treatment program. *Id.* at 152. The individual chose to enter the outpatient alcohol treatment program. *Id.* at 153.

## **V. Analysis**

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. After due deliberation, I have determined that the individual's access authorization should not be granted at this time. I cannot find that such a grant would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings I make in support of this decision are discussed below.

### **A. Criteria H and J**

The DOE consultant-psychiatrist testified convincingly at the hearing that the individual is a user of alcohol habitually to excess and suffers from alcohol abuse as defined by the Diagnostic and Statistical Manual of Mental Disorders, 4<sup>th</sup> edition, Text Revised (DSM-IV-TR). Moreover, the individual's own expert, a psychologist with experience

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<sup>3</sup> The individual explained at the hearing that he was a passenger in his own vehicle at the time of this incident. Tr. at 145. He had asked his cousin to drive his vehicle because he felt intoxicated. *Id.*

counseling alcoholics, agreed with the DOE consultant-psychiatrist's diagnosis in this case. The focus of my analysis under Criteria H and J, therefore, revolves around whether the individual has presented convincing evidence to demonstrate that he is adequately rehabilitated or reformed from his alcohol abuse<sup>4</sup> and his habitual use of alcohol to excess.

## **Mitigation**

### **The Individual's Testimony and his Documentary Evidence**

The individual testified that he last consumed alcohol on January 28, 2005. Tr. at 162. He related that he began attending Alcoholics Anonymous (AA) in late February 2005 and that he has a sponsor. *Id.* at 156, 166. To support his testimony, the individual submitted AA Verification Forms showing that he has attended two meetings each week between February 26, 2005 and August 12, 2005. *Id.* at 156, Exhibits. D-1 to D-3. The individual claims that AA has taught him that "controlled drinking" simply does not work. Tr. at 162. He testified that he no longer goes to bars or any of the establishments where he previously consumed alcohol. *Id.* at 167-168. He added that one of the important lessons he has learned from AA is that he must "change his playpen and play friends." *Id.*

The individual also testified that he entered an outpatient alcohol treatment program on March 2, 2005. *Id.* at 153. He stated that the classes have taught him about the "insanity of alcoholism." *Id.* at 156. According to the individual, the classes are providing him with the structure that he needs to prevent relapse. *Id.* The individual also submitted an overview of the outpatient program in which he is participating. Ex. C. According to Exhibit C, the DWI/Drug Court Program is a post conviction, pre-sentence, voluntary program that consists of four phases: Substance Abuse Education/Prevention, Relapse Prevention, Sobriety Maintenance, and Transition and Sobriety Maintenance. *Id.* The individual provided documentation at the hearing showing that he has completed two of the four phases of the DWI/Drug Court Program. Exhibits E-1 and E-2.

At the hearing, the DOE Counsel pointed out that in 2000 and 2001 the individual remained abstinent for 18 months in order to comply with a court order relating to his 2000 DWI. Tr. at 156. The DOE Counsel then queried why the DOE should believe that after the individual completes the terms and conditions of the DWI/Drug Court Program he will remain sober. *Id.* In response, the individual stated that unlike now there was no structure in place for him following the 2000 DWI conviction. *Id.* at 161. He related at the hearing that he has been under the care of a psychologist. *Id.* at 159-160. According to the individual, his psychologist has made him aware that he harbors repressed anger which he expresses in unhealthy ways after he consumes alcohol. *Id.* The individual

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<sup>4</sup> Section I. A. of the Notification Letter contained an error in its wording that led the individual and his girlfriend to believe that the DOE thought he suffered from alcohol dependence, not alcohol abuse. The wording in question is as follows: "He is a user of alcohol habitually to excess and is a dependent of alcohol suffering from alcohol abuse." Notification Letter at 1. At the hearing, I confirmed with the DOE consultant-psychiatrist the words "a dependent of alcohol" is excess verbiage that should not be in the sentence quoted above. Tr. at 46. To ensure that the record in this case is clear, I find that the words "a dependent of alcohol" appearing in lines 5 and 6 of Section I.A. of the Notification Letter should be stricken from that document.

added that his psychologist is teaching him healthy ways to deal with his anger. *Id.* The individual concluded his testimony by stating that his future intention regarding alcohol is “total abstinence,” adding, “there is no other way.” *Id.* at 170.

### **The Psychologist’s Testimony**

The psychologist testified that when he first met the individual on April 27, 2005, the individual lacked the awareness that he suffers from an alcohol problem. *Id.* at 52, 57. After diagnosing the individual with alcohol abuse, the psychologist began meeting weekly with the individual for individual therapy sessions. *Id.* at 59. According to the psychologist, the therapy focuses on (1) looking at how the individual’s family has influenced him, (2) examining societal norms so the individual can start making better choices, (3) setting boundaries for the individual, (4) learning how to express anger without resorting to alcohol, and (5) learning not to let anger fester and explode. *Id.* at 58. In a period of four months, opined the psychologist, the individual has gained a great deal of perspective on his alcohol abuse issues. *Id.* at 59-60. The psychologist first stated that the individual needs to remain abstinent for the rest of his life. *Id.* at 60. He then opined that the individual has the self motivation to remain abstinent even though the individual’s alcohol treatment has been externally imposed by the court. *Id.* at 62. The psychologist gives the individual a good prognosis but agrees with the DOE consultant-psychiatrist’s assessment that the individual needs one year of sobriety to be considered rehabilitated or reformed from his alcohol abuse. *Id.* at 62, 65.

### **Two Supervisors’ Testimony**

The President and Vice President of the DOE contractor that the individual works for testified on his behalf at the hearing. The company President expressed surprise to learn that the individual suffered from alcohol abuse. *Id.* at 84. She testified that the individual has attended many company functions where beer and wine were served. *Id.* at 85. She related that she never observed the individual drinking to excess at any of these functions. *Id.* She added that the company conducts random drug and alcohol tests and she knows that the individual has never failed any of these tests. *Id.* at 96. She concluded by relating that the individual is an excellent employee. *Id.* at 87.

The company’s Vice President testified at the hearing that the individual has undergone several random alcohol and drug tests and has never failed any of those tests. *Id.* at 81. He stated that the individual is a very valuable employee who is intelligent and technically very competent. *Id.* at 77-79.

### **The Girlfriend’s Testimony**

The individual’s girlfriend testified that she has lived with the individual for three years. *Id.* at 102. She does not believe that he has a problem with alcohol. *Id.* at 108. She provided conflicting testimony about when she last observed the individual in an intoxicated state. She first testified that the individual is “never one to get drunk.” *Id.* at 103. She later testified that she saw him drunk last summer (2004). *Id.* at 105. According to the girlfriend, the individual told her that he does not plan to consume alcohol again. *Id.* at 109. The girlfriend claims that she goes to church and AA meetings with him. *Id.* at 110. When asked if she consumes alcohol, the girlfriend responded

negatively, adding “it would be disrespecting him.” *Id.* at 111. She concluded her testimony by stating, “I don’t want no part of it [alcohol].”

### **The Co-worker’s Testimony**

The co-worker testified that he has worked with the individual for three years. *Id.* at 116. The co-worker related that he has seen the individual drink before but never kept track of the number of alcoholic beverages that the individual consumed. *Id.* He added, however, that the individual has never shown up to work drunk and has never been late for work. *Id.* at 119.

### **The Brother’s Testimony**

The individual’s brother testified that he last saw his brother consume alcohol last year. *Id.* at 124. He added that he does not think that his brother drinks much now. *Id.* at 127. He related that he has noticed that his brother has lost weight and has a new positive outlook on life. *Id.* He believes that if his brother sets a goal of not drinking that he will achieve that goal. *Id.* at 129-130.

### **The DOE Consultant-Psychiatrist’s Testimony**

The DOE consultant-psychiatrist testified twice at the hearing. During his first testimony, the DOE consultant-psychiatrist confirmed his opinion that the individual suffers from alcohol abuse and is a user of alcohol habitually to excess. *Id.* at 42. He testified that to achieve rehabilitation, the individual has two options: (1) go to AA, have a sponsor, work on the 12 steps for a minimum of 100 hours over at least one year’s time, and be abstinent from all non-prescribed controlled substances for one year; or (2) complete a professionally run alcohol treatment program and be sober for two years.<sup>5</sup> *Id.* at 43. The DOE consultant-psychiatrist testified a second time after he had listened to the testimony of the other witnesses. He opined that it is positive that the individual has acknowledged his problem and is doing something about it. *Id.* at 173. In fact, he was impressed with the individual’s progress to date. *Id.* However, the DOE consultant-psychiatrist believes that the individual needs to be abstinent for one year (*i.e.* until January 28, 2006) before he could be considered adequately rehabilitated or reformed from his alcohol-related issues. *Id.* at 160. The DOE consultant-psychiatrist concluded his testimony by stating that the individual is doing all the right things, for all the right reasons, with regard to his alcohol recovery but he simply needs more time to achieve rehabilitation and reformation.

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<sup>5</sup> While the DOE consultant-psychiatrist did not address his recommendations for reformation at the hearing, those recommendations are set forth in his Psychiatric Report. *See* Ex. 6. The recommendations are as follows: (1) if the individual goes through one of the two rehabilitation programs enumerated by the DOE consultant-psychiatrist, then the individual needs a minimum of one or two years of abstinence from alcohol and all non-prescribed controlled substances; or (2) if the individual does not go through one of the two rehabilitation programs, then the individual needs a minimum of three years of abstinence from alcohol and all non-prescribed controlled substances. *See* Ex. 6 at 21.

## **Hearing Officer Evaluation of Evidence**

The documentary and testimonial evidence in this case confirms that the individual is addressing his alcohol abuse and habitual use of alcohol to excess, albeit at the behest of the judicial system. The psychologist and the DOE consultant-psychiatrist convinced me that the individual needs one year of sobriety before he can achieve rehabilitation and reformation from his alcohol abuse. I therefore find that the individual is at risk for experiencing a significant defect in his judgment and reliability until he is adequately rehabilitated or reformed from his alcohol abuse. While I believed the individual's testimony that he intends to maintain his sobriety, I am uncertain whether the individual will achieve that goal once the court-ordered DWI/Drug Court Program concludes. In the end, the individual's alcohol recovery is time-dependent. At this point, not enough time has elapsed for me to conclude that the individual has achieved rehabilitation or reformation from his alcohol-related problems and to make a predictive assessment that the individual will maintain his sobriety. Therefore, I must find, based on the weight of the evidence, that the individual has not mitigated the LSO's security concerns under Criteria H and J.

### **A. Criterion L**

All of the individual's interactions with the judicial system at issue in this case are linked in some way to his excessive alcohol consumption. It is my common-sense decision that until the individual achieves rehabilitation or reformation from his alcohol-related problems, the likelihood that he will be arrested for another alcohol-related offense remains palpable. Because the individual has not mitigated the LSO's security concerns under Criteria H and J in this case, I must find that he has not mitigated the LSO's security concerns associated with Criterion L either.

## **V. Conclusion**

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria H, J and L. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth sufficient evidence to mitigate any of the security concerns advanced by the LSO. I therefore cannot find that granting the individual's access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should not be granted. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Ann S. Augustyn  
Hearing Officer  
Office of Hearings and Appeals

Date: October 12, 2005